

BURMA LAW REPORTS

CRIMINAL REVISION

Before U Maung Maung, J.

ASHA BI BI } (APPLICANTS)
ABDUL RAHIM }

C. C.
1965

Jan. 1

V.

THE UNION OF BURMA (RESPONDENT). *

Citizenship—prosecution under s. 5 (a) of the Union Citizenship Act. for non-renewal of stay permit—name on passport of foreigner father while minors—whether will divest Union Citizenship.

The Applicants were born in Burma in 1944 and 1946 respectively and their mother and grand-mother being of Burmese origin they were accordingly natural born citizens. In 1958, while they were still minors, their father, a Pakistani national, took them to Pakistan on his passport. On their return, the Applicants resided in Burma under stay permits, and were prosecuted and convicted on the expiry of the said permits which had not been renewed.

The main question which arose was whether the fact that the names of the Applicants were borne in the passport taken out by their father, would divest them of Union Citizenship.

Held: The names of the Applicants appeared on their father's (Pakistani) passport, not by their volition. Nor did the children apply for stay permits. Thus, what has happened does not come within the mischief of s. 5 (a) of the Union Citizenship Act.

It is also clear that the Applicants themselves never took out Pakistani passports, nor registered themselves as Pakistani citizens with the Pakistan Embassy at Rangoon.

The convictions were accordingly set aside.

Obiter: Regarding the question of dual citizenship, it is for the Applicants to examine their own situations in the light of s. 14A of the Union Citizenship Act.

* Criminal Revision Nos. 173 (B) and 174 (B) of 1964. Review of order of 3rd Additional Magistrate, Rangoon, in C.R.T. Nos. 455 and 456 of 1964, dated 14th July, 1964.

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Tun Sein for the applicants.

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U Hnit (Government Advocate) for the respondent.

U MAUNG MAUNG, J.—This revision application and Criminal Revision No. 174(B) of 1964 have been taken up together, because the facts giving rise to them are similar and identical questions of law are also involved. The learned Sessions Judge who has submitted his recommendations had also dealt with the two cases together. Asha Bi Bi born in 1944 and Abdul Rahim born in 1946 are the children of one Sultan Mohamed, a Pakistani national. In 1958, their father took them to Pakistan for a stay of two months. The names of the two children, then minors, were borne on his Pakistani Passport. On arrival in Burma, the father applied for stay permits for the two children and these were issued. The applicants failed to renew their stay permits claiming that they were Burmese citizens by birth, and therefore the permits were taken out by mistake.

Prosecuted under section 13 (1) of the Burma Immigration Act for overstaying their permits, the applicants were found guilty by the Third Additional Magistrate, Rangoon and sentenced to pay fines of K 100 each. Against those orders the applicants went on revision to the learned Sessions Judge, who has recommended that the convictions should be set aside.

The learned trial Magistrate did find that the applicants were born in Burma and that their mother and grandmother were of Burmese origin. These make the applicants natural born citizens by virtue of section 11(ii) of the Constitution. The question therefore is whether the fact that their names were borne on the passports taken out by their father would divest them of their Union Citizenship.

The learned Sessions Judge has rightly quoted *Maung Ko Gyi v. The Union of Burma* (1) in which the principle was laid down that a person born of a foreigner and a Burmese mother did not lose his Union Citizenship only because he was taken to India during his minority and his name was carried in his father's Indian Passport.

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In these two applications also, Asha Bi Bi and Abdul Rahim were minors when their Pakistani father took them out of Burma for a short stay. It was not by their volition that their names were carried on his passport on their return. Nor did the children apply for stay permits. Thus, what has happened does not come within the mischief of section 5 (a) of the Union Citizenship Act which deprives a child of his Union Citizenship if, on the expiry of a year after he attains majority, he has failed to renounce any other citizenship that he may have. That provision, the learned Sessions Judge has rightly pointed out, applies only to persons born after the commencement of the Constitution, i.e., 4th January, 1948.

I may point out that the principle in *Maung Ko Gyi v. The Union of Burma* (1) has been further explained and upheld in *Chan You Ta v. The Union of Burma* (2) by a Bench of this Court. In that case, it was ruled that a natural born citizen does not lose his citizenship and become a foreigner merely because he was compelled, under deportation order, to take out a Chinese passport. Here, in these two applications it is clear that the applicants themselves never took out Pakistani passports nor registered themselves as Pakistani citizen with the Embassy of Pakistan in Rangoon.

U Tun Sein, learned Advocate for the applicants and U Hnit, learned Government Advocate, concur in their support of the recommendations made by the learned Sessions Judge.

(1) (1959) B.L.R. 268.

(2) Civil 1st Appeal No. 114 of 1963.

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In these circumstances, the recommendations of the learned Sessions Judge must be accepted. The convictions entered against the applicants are set aside. If they have already paid the fines, they must be given their refund.

The learned Sessions Judge made some comments on the undesirability of dual nationality. People who retain Union citizenship and a foreign nationality at the same time are, in his potent words, "a curse". Section 14(a) of the Union Citizenship Act, introduced by the amendment of 1954 is aimed at eliminating, to the greatest extent possible, the curse of dual nationality. It is for the applicants to examine their own situations in the light of that section and then do whatever they might feel advised to do, if they should feel that they might fall within the provision thereof.